



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 7, 1996

Ms. Kathryn H. West
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0911

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40194.

On behalf of the City of Dallas (the "city"), you inform us that the Dallas Police Department received a request on March 25, 1996, for a copy of the investigation involving officer Dewayne Thompson. This office received your request for an open records ruling on the public release of the requested information on April 22, 1996.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

Since the city received the request on March 25, 1996, and requested a decision from this office on April 22, 1996, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The city asserts that section 552.108 of the Government Code is applicable.

When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. *See Open Records Decision No. 552*. (1990). Section 552.108 protects the interests of the governmental body that raises it rather than a third party. The city has not raised any specific compelling reasons to overcome the presumption that the information is public. We therefore conclude that the city may not withhold the requested information from the requestor based on section 552.108 of the Government Code.

However, we note that the requested file contains information that is excepted from public disclosure under section 552.101 of the Government Code. Section 552.101 applies to information that is confidential by law. The fact that information is deemed confidential by law means that the presumption of openness is overcome. We have marked portions of the information that is made confidential by the common-law right to privacy. We have also marked information, the release of which is governed by the Medical Practice Act, V.T.C.S. article 4495b, section 5.08. *See Open Records Decision No. 565* (1990).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a stylized flourish extending from the end.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 40194

Enclosures: Marked documents

cc: Ms. Sheri K. Jackson
Program Compliance Auditor
Program Compliance Division
Texas Commission on Alcohol and Drug Abuse
710 Brazos Street
Austin, Texas 78701
(w/o enclosures)